

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JOSEPH D. GORSHA, *et al.*,

Plaintiffs,

v.

BERNARD E. CLARK, *et al.*,

Defendants.

Case No. 2:18-cv-508

Judge Graham

Magistrate Judge Jolson

OPINION AND ORDER

This matter is before the Court on Defendants Jonathan C. Clark and Clark & Clark and Associates, LLC's ("Defendants Clark & Clark") Motion for Judgment on the Pleadings on Crossclaim and First Amended Crossclaim of Bernard E. Clark, Alice R. Clark, and Scott Clark (collectively, the "Clark Family"). (ECF No. 54.) For the reasons that follow, Defendants Clark & Clark's motion is **DENIED AS MOOT**.

On August 20, 2018, the Clark Family filed its crossclaim against Defendants Clark & Clark (ECF No. 26), alleging that because Defendants Clark & Clark prepared and recorded the deed at issue in this case, Defendants Clark & Clark are liable to indemnify or pay contribution to the Clark Family in the event Plaintiffs were entitled to recovery on their five causes of action against them. (*Id.* at 112–13.) On September 20, 2018, the Clark Family amended its crossclaim as to Defendant Mid Ohio Title Agency, LLC d/b/a Lanco Title Agency, but omitted its claim for indemnification and contribution against Defendants Clark & Clark from the amended pleading. (ECF No. 43.) On October 22, 2018, Defendants Clark & Clark moved to dismiss the Clark Family's indemnification and contribution crossclaim against them. (ECF No. 54.) The Clark

Family opposed Defendants Clark & Clark's motion (ECF No. 60), and Defendants Clark & Clark replied (ECF No. 61). The Court now reviews Defendants Clark & Clark's motion.

The Clark Family amended its crossclaim on September 20, 2018. When a pleading is amended under Federal Rule of Civil Procedure 15(a), the amended pleading supersedes the pleading it alters. 6 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure*, § 1476 (3d ed. 2010). Upon amending its crossclaim, the Clark Family omitted its indemnification and contribution claim against Defendants Clark & Clark. If a party omits a certain claim from an amended pleading that it previously raised in its prior pleading, the party is bound by the amended pleading and cannot proceed on the omitted claim, because that claim is no longer a part of the operative pleading. *Id.*, citing *Haddock v. Nationwide Fin. Servs. Inc.*, 514 F. Supp. 2d 267 (D. Conn. 2007). "The prior pleading is in effect withdrawn as to all matters not restated in the amended pleading, and becomes *functus officio*." *Nisbet v. Van Tuyl*, 224 F.2d 66, 71 (7th Cir. 1955).

Therefore, as of September 20, 2018, the Clark Family was no longer proceeding on its indemnification and contribution crossclaim against Defendants Clark & Clark. As such, Defendants Clark & Clark's motion for judgment on the pleadings (ECF No. 54) is hereby **DENIED AS MOOT**.

IT IS SO ORDERED.

/s/ James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: October 8, 2019